

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN DION CHANCY,

Defendant-Appellant.

UNPUBLISHED

December 14, 2004

No. 249893

Wayne Circuit Court

LC No. 02-012305

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of second-degree murder, MCL 750.317, for which he was sentenced to twenty-five to fifty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first challenges the sufficiency of the evidence. No special action is necessary to preserve this issue. *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987). In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

“The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse.” *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). Second-degree murder is a general intent crime which requires proof of malice. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). “Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Goecke, supra* at 464. Malice may be inferred from all the

facts and circumstances of the killing. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

Defendant contends that the proofs were insufficient regarding causation. We disagree. The evidence showed that defendant and his cousin attacked the victim, punched him and knocked him to the ground, and then kicked and stomped on him. The beating resulted in two hairline skull fractures and massive brain trauma. The assistant medical examiner who performed the autopsy testified that although the victim was able to leave the scene on his own, the injuries would have rendered him unconscious within one to two hours. He was discovered in an alley the next morning and hospitalized but died the following day. The forensic pathologist testified that the injuries were recent, apparently meaning that they were incurred approximately within twenty-four hours of death not including life-sustaining efforts. Given that defendant kicked the victim in the head and the victim died from blunt-force trauma to the head, the evidence was sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that the death was caused by the beating defendant inflicted.

Defendant next challenges the scoring of the legislative sentencing guidelines. Defendant preserved this issue by raising it at sentencing. MCR 6.429(C). “Sentencing issues are reviewed by this Court for an abuse of discretion by the trial court.” *People v Garza*, 246 Mich App 251, 256; 631 NW2d 764 (2001). The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). “A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision “for which there is any evidence in support will be upheld.” *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). “Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence.” *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

Offense variable (OV) 5 takes into consideration “psychological injury to a member of a victim’s family.” MCL 777.35(1). It is to be scored at fifteen points if a family member suffered serious psychological injury requiring professional treatment. MCL 777.35(1)(a). The scoring instructions authorize scoring fifteen points “if the serious psychological injury . . . may require professional treatment. . . . [T]he fact that treatment has not been sought is not conclusive.” MCL 777.35(2).

One of the victim’s sisters stated that the family was “devastated” by their loss. Another sister stated that she had trouble sleeping and had to take medication. Her anxiety over the incident had affected her physical health. A nephew stated that he found it difficult to even think about his uncle’s death and felt fearful of others since the incident. While the family members’ reactions to the victim’s death may be common, and the effect on their lives may not have been debilitating, the evidence was sufficient to support the scoring of OV 5.

Offense variable 7 takes into account “aggravated physical abuse” of the victim. MCL 777.37(1). Defendant was assessed fifty points, reflecting that the “victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and

anxiety a victim suffered during the offense.” MCL 777.37(1)(a). The trial court scored this variable based on the brutality of the beating. We find the evidence was sufficient to support the scoring of OV 7.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Kirsten Frank Kelly